

shows that doing so results in a different grace year (see § 404.435 (a) and (c)).

[40 FR 42865, Sept. 17, 1975; 40 FR 45805, Oct. 3, 1975, as amended at 45 FR 48117, July 18, 1980; 45 FR 58107, Sept. 2, 1980; 48 FR 4282, Jan. 31, 1983; 55 FR 37461, Sept. 12, 1990]

§ 404.434 Excess earnings; method of charging.

(a) *Months charged.* For purposes of imposing deductions for taxable years after 1960, the excess earnings (as described in § 404.430) of an individual are charged to each month beginning with the first month the individual is entitled in the taxable year in question and continuing, if necessary, to each succeeding month in such taxable year until all of the individual's excess earnings have been charged. Excess earnings, however, are not charged to any month described in §§ 404.435 and 404.436.

(b) *Amount of excess earnings charged—(1) Insured individual's excess earnings.* The insured individual's excess earnings are charged on the basis of \$1 of excess earnings for each \$1 of monthly benefits to which he and all other persons are entitled (or deemed entitled—see § 404.420) for such month on the insured individual's earnings record. (See § 404.439 where the excess earnings for a month are less than the total benefits payable for that month.)

(2) *Excess earnings of beneficiary other than insured individual.* The excess earnings of a person other than the insured individual are charged on the basis of \$1 of excess earnings for each \$1 of monthly benefits to which he is entitled (see § 404.437) for such month. The excess earnings of such person, however, are charged only against his own benefits.

(3) *Insured individual and person entitled (or deemed entitled) on his earnings record both have excess earnings.* If both the insured individual and a person entitled (or deemed entitled) on his earnings record have excess earnings (as described in § 404.430), the insured individual's excess earnings are charged first against the total family benefits payable (or deemed payable) on his earnings record, as described in paragraph (b)(1) of this section. Next, the excess earnings of a person entitled on the in-

sured individual's earnings record are charged (as described in paragraph (c)(2) of this section) against his own benefits, but only to the extent that his benefits have not already been charged with the excess earnings of the insured individual. See § 404.441 for an example of this process and the manner in which partial monthly benefits are apportioned.

[32 FR 19159, Dec. 20, 1967, as amended at 38 FR 17716, July 3, 1973; 43 FR 8133, Feb. 28, 1978]

§ 404.435 Excess earnings; months to which excess earnings cannot be charged.

(a) *Monthly benefits payable for months after 1977.* Beginning with monthly benefits payable for months after 1977, no matter how much a beneficiary earns in a given taxable year, no deduction on account of excess earnings will be made in the benefits payable for any month—

(1) In which he or she was not entitled to a monthly benefit;

(2) In which he or she was considered not entitled to benefits (due to noncovered work outside the United States, no child in care, or refusal of rehabilitation, as described in § 404.436);

(3) In which he or she was age 72 or over (age 70 for months after December 1982);

(4) In which he or she was entitled to payment of disability insurance benefit;

(5) In which he or she was age 18 or over and entitled to a child's insurance benefit based on disability;

(6) In which he or she was entitled to a widow's or widower's insurance benefit based on disability; or

(7) Which was a *nonservice* month (see paragraph (b) of this section) in the beneficiary's *grace year* (see paragraph (c) of this section).

(b) *Nonservice month defined.* A nonservice month is any month in which an individual, while entitled to retirement or survivors benefits—(1) does not work in self-employment (see paragraphs (d) and (e) of this section); (2) does not perform services for wages greater than the monthly exempt amount set for that month (see paragraph (f) of this section and § 404.430 (b), (c), and (d)); and (3) does not work in